

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

Thomas Sessions,

Plaintiff,

vs.

John Doe, Director and Jane Doe,
Classification Worker,

Defendants.

Civil Action No. 9:18-cv-2804-CMC

ORDER

This matter is before the court on Plaintiff's Complaint filed October 17, 2018. ECF No. 1. In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2), D.S.C., this matter was referred to United States Magistrate Judge Bristow Marchant for pre-trial proceedings and a Report and Recommendation ("Report") on dispositive issues.

On June 18, 2019, the Magistrate Judge entered an Order noting the deadlines in the Scheduling Order had expired and giving the parties 20 days in which to file dispositive motions. ECF No. 21. Defendant John Doe thereafter filed a motion for summary judgment. ECF No. 30.¹ Because Plaintiff is proceeding *pro se*, the Magistrate Judge entered orders pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), advising him of the importance of the motion and the need to file an adequate response. ECF No. 31. Plaintiff did not respond. Thereafter, the Magistrate Judge issued a Report recommending this action be dismissed for failure to prosecute. ECF No. 33. However, if Plaintiff responded to the Report and notified the court he wished to

¹ The summons issued for Defendant Jane Doe, classification worker, was returned unexecuted by the South Carolina Department of Corrections Office of General Counsel because the "Defendant could not be identified." ECF No. 17.

continue with the case, the Clerk was directed to vacate the Report and return it to the Magistrate Judge for a determination on the summary judgment motion. *Id.* The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and the serious consequences if he failed to do so. Although the copy of the Report mailed to Plaintiff has not been returned to the court, Plaintiff has not filed objections and the time for doing so has passed.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b). The court reviews the Report only for clear error in the absence of an objection. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”) (citation omitted).

After a review of the record, the applicable law, and the Report and Recommendation of the Magistrate Judge, the court finds no clear error and agrees with the Report’s recommendation this matter should be dismissed. Accordingly, the court adopts the Report by reference in this Order. As Plaintiff was specifically warned of the possibility of dismissal if he did not respond to the Magistrate Judge’s Order, this action is hereby dismissed without prejudice pursuant to Fed.

R. Civ. P. 41(b). *See also Ballard v. Carlson*, 882 F.2d 93, 95 (4th Cir. 1989) (“The Federal Rules of Civil Procedure recognize that courts must have the authority to control litigation before them, and this authority includes the power to order dismissal of an action for failure to comply with court orders.”).

IT IS SO ORDERED.

s/Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
Senior United States District Judge

Columbia, South Carolina
November 18, 2019